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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1979

SCM CORPORATION,

Petitioner,

v.

FEDERAL TRADE COMMISSION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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No. 79-

SCM CORPORATION,

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v.

FEDERAL TRADE COMMISSION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner SCM Corporation ("SCM") respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in this proceeding on January 14, 1980.

Opinions Below

The opinion of the Court of Appeals is reported at 612 F.2d 707 (78-79a)*. That opinion denied SCM's petition for review and enforced the opinion and order of the Federal Trade Commission ("FTC" or "Commission"), reported at 92 F.T.C. 416 (68-77a), which was entered after the case had been remanded by the Court of Appeals' earlier decision, reported at 565 F.2d 807 (51-

* The opinions below are reproduced in a separate appendix submitted with this petition and page references are to that volume.

65a), which granted SCM's petition for review of the original Commission opinion and order, reported at 89 F.T.C. 60 (32-50a). The latter opinion affirmed, with certain modifications, the initial decision and order of the Administrative Law Judge ("ALJ"), reported at 89 F.T.C. 46 (4-26a).

Jurisdiction

The judgment of the Court of Appeals was entered on January 14, 1980. This petition for a writ of certiorari is being filed within ninety (90) days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

Question Presented

Did the Court of Appeals err in affirming the FTC's entry of a broad cease and desist order against SCM because:

(a) Section 8 of the Clayton Act, while by its terms prohibiting an individual from simultaneously serving on the boards of directors of competing corporations, does not provide that an involved corporation violates the Act or may be enjoined thereunder.

(b) The FTC entered its order without making the required evidentiary showing that relief was needed—circumventing the standard for injunctive relief ("cognizable danger of recurrent violation") established by this Court in *United States* v. *W. T. Grant Co.*, 345 U.S. 629, 633 (1953), by the device of inferring such a danger from the fact of a past violation alone and then shifting the burden of proof to the respondent to disprove the need for an injunction.

(c) The FTC has imposed a much broader cease and desist order on one of two similarly situated respondents for no reason other than to punish that respondent for exercising its due process right to a hearing and to deter others in the future from a similar exercise.

Statutes Involved

Sections 8 and 11 of the Clayton Act, 15 U.S.C. §§ 19 and 21 are set forth in relevant part as an addendum to this petition.

Statement of the Case

This action was commenced by the FTC's service of a complaint on Richard C. Bond ("Bond"), Kraftco Corporation ("Kraftco") and SCM on July 22, 1975, alleging that the simultaneous service of Bond on the boards of directors of Kraftco and SCM violated Section 8 of the Clayton Act, 15 U.S.C. § 19, because the corporate respondents were competitors in the manufacture and sale of margarine, edible oils and barbecue sauce. The FTC's complaint asserted no improper or unlawful conduct by any of the respondents, other than the alleged interlocking directorship. There were no allegations of unfair trade practices or other anticompetitive conduct. Nor was there any allegation of a "cognizable danger of recurrent violation"—a pleading omission that was deliberately maintained even after the ALJ called it to the Staff's attention at the outset of the proceedings.*

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* The ALJ warned the Staff concerning its failure to allege in the complaint a "cognizable danger of recurrent violation":

> "Given this language, the Supreme Court's opinion of W.T. Grant, don't you [Staff Counsel] have a defective complaint in this case?"

(footnote continued on following page)

Bond voluntarily resigned from the SCM board on August 1, 1975, within ten days after the FTC complaint was served. Thereafter, Bond and Kraftco agreed to the entry of consent orders by the FTC (1-3a & 27-31a).

The basic facts in this case have never been in dispute and were incorporated into a stipulated record. From the outset, SCM has acknowledged that: Mr. Bond simultaneously served on the SCM and Kraftco boards in 1975; with respect to certain products (less than 7% of their sales), SCM and Kraftco were in competition; and, accordingly, there had been a violation of Section 8 of the Clayton Act—albeit a violation which the Commission acknowledged in its original opinion had probably not been intentional (45a).

SCM urged that there was no statutory authority for entry of an injunction against SCM since Section 8 provided for entry of orders only against an individual director and not against a corporation. SCM also argued that there was no need for an injunction and that the Staff had not met its burden of proof under the *Grant* standard. Nonetheless, SCM offered the Commission its voluntary assurance of future compliance with the statute.*

(footnote continued from preceding page)

Staff Counsel responded by stating:

> "The Justice Department is not operating under the same standards of the Clayton Act that the Federal Trade Commission operates.
>
> "The Justice Department has to enjoin further violations. Therefore, it is arguable that the Justice Department has to show that there is threat of future violation. The Federal Trade Commission, on the other hand, is required to enter an order to cease and desist once a violation is found." (Transcript of Proceeding on December 19, 1975 at 24-26).

* Such a voluntary assurance of future compliance was specifically contemplated by Section 2.21 of the Commission's Rules of Practice then in effect.

Without objecting to the nature or adequacy of SCM's voluntary assurance of compliance, the Staff simply took the position that only a formal order would be acceptable. The Staff maintained that the mere fact of a past violation, without more, justified the FTC's entry of a permanent injunction against SCM and that, once the fact of a past violation was established, it was SCM's burden to prove that an injunction was unnecessary (*see* Complaint Counsel's Brief on Appeal to the Commission at 22).

Both the ALJ and the Commission adopted the Staff's position *in toto* (19-22a & 44-46a) and entered a cease and desist order against SCM far broader than the order consented to with Kraftco.

SCM petitioned for review. The Court of Appeals, while rejecting SCM's position as to the FTC's lack of authority under Section 8 to enter orders against corporations, upheld SCM's position regarding the standard for injunctive relief and remanded because "the Commission seems to have applied an erroneous standard and confused SCM's burden on the defense of mootness with the FTC staff's burden of showing that an injunction was warranted (62a). The Court directed the parties to "address themselves to the issue whether 'there exists some *cognizable* danger of recurrent violation' [citing *United States* v. *W. T. Grant Co.*, 345 U.S. at 633]" (62a).

The Commission filed a petition for rehearing in which it objected strenuously to the application of the *Grant* standard to Commission injunction proceedings, arguing that invocation of that standard could have "a severe adverse effect on the ability of the Commission to carry out its statutory responsibilities." (Petition for Rehearing and Suggestion for Rehearing *En Banc*" at 2). The petition was denied (66a & 67a).

On remand, the Commission held no hearing and took no additional evidence but based its decision as to the need for permanent injunctive relief against SCM entirely on the original (then three-year-old) record. The Commission dealt with the Court of Appeals' decision by observing that, in its prior opinion, "[o]ur phraseology was plainly infelicitous" (73a). The Commission simply reimposed on SCM the same broad order that it had previously entered (68-71a).

SCM again petitioned for review, arguing, *inter alia,* that the Commission had only paid lip service to the *Grant* standard. SCM pointed out that the Commission had again presumed, without evidentiary support other than the admitted violation, a need for an injunction by creating an "inference of cognizable danger of recurrent violation" (75a) and had again shifted the burden to SCM to disprove the need for injunctive relief by requiring SCM to demonstrate "extenuating circumstances" by way of "rebuttal" (75a).

On January 14, 1980, the Court of Appeals denied SCM's petition for review and sustained the Commission's order even though, SCM respectfully submits, the Commission's analysis indicated that it did not apply the *Grant* standard because of its expressed fear that uniform application of the *Grant* standard to FTC proceedings would undermine its regulatory authority.

Reasons for Granting the Writ

I.

The Court of Appeals Erred in Extending on "Policy" Grounds the Substantive Liability Provision of Section 8 of the Clayton Act to Corporations Where the Express Language of the Statute Is Limited to Individual Directors, Where There Is No Clear Legislative History Supporting Such an Extension, and Where Such an Extension Is Not Necessary to Effectuate the Purposes of the Statute.

The present case squarely presents an important question of Federal law which was explicitly left open by this Court in *Grant*: "whether corporations can violate § 8, or, for other reasons, be enjoined under the statute." 345 U.S. at 634 n.9.*

Section 8 provides that "[n]o *person* at the same time shall be a *director* . . . " (emphasis added). It does not provide that a corporation is prohibited from electing a director who is also a director of a competitor. Unless basic principles of statutory interpretation, there was no need for the Court of Appeals to go beyond the plain language of Section 8 to determine that its scope was limited to individual directors. *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 201 (1975) ("[T]he language of a statute controls when sufficiently clear in its context"); *United States* v. *Great Northern Railway Co.*, 343 U.S. 562, 575 (1952) ("It is our judicial function to apply statutes on the basis of what Congress has written, not what Congress might

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* The present litigation is not the only recent case in which this issue has arisen. *See In re TRW INC.*, 93 F.T.C. 325 & 372 (1979), *petition for review pending, TRW INC.* v. *FTC* (No. 79-7209, 9th Cir.).

have written.") *See Bouie* v. *City of Columbia,* 378 U.S. 347, 362-63 (1964).

While the Court of Appeals need have gone no farther than the express language of Section 8 to conclude that it does not impose substantive liability on corporations, as distinct from individual directors, a review of the legislative history further supports that conclusion. The legislative history of Section 8 indicates that Congress made a deliberate decision not to subject corporations to substantive liability under that statute. As originally enacted, Section 8 included specific statutory language imposing direct liability on banking corporations for violation of the statute. 38 Stat. 732-33. No comparable provision was provided for industrial corporations. Clearly, Congress could have used the same language that it did use as to banking corporations if it had intended to subject industrial corporations to Section 8. Moreover, in 1935 Congress amended Section 8 by deleting the language that imposed direct liability even on banking corporations. 49 Stat. 718.

A further indication that Congress did not intend Section 8 to impose liability on corporations, as distinct from individual directors, appears in the committee reports which reflect a basic concern about the power of bankers, investment bankers and individuals of great wealth who were thought to control whole industries. Thus, there was concern about the problem of a few powerful "*individuals*" who controlled numerous corporations. H.R. Rep. No. 627, Part 1, 63d Cong., 2d Sess. 19-20 ("The idea that there are only a few *men* in any of our great corporations and industries who are capable of handling the affairs of the same is contrary to the spirit of our institutions") (Emphasis added). H.R. Rep. No. 627, Part 3, 63d Cong., 2d Sess. 9 ("*Persons are prohibited* from acting at the same time as directors . . .") (Emphasis added). *See* H.R. Rep. No. 627, Part 2, 63d Cong., 2d Sess. 2011.

The Court of Appeals, acknowledging that "if the language of the section is considered alone, the result is not clear" (57a), nevertheless held that the substantive prohibition of Section 8 applies to corporations on the ground that "policy supports a broad reading of section 8 and section 11 indicates that such a construction is reasonable" (57a)*.

SCM respectfully suggests that it was improper for the Court of Appeals, based solely upon its own policy judgments, to expand the substantive scope of Section 8. *See Hudson Distributors, Inc.* v. *Eli Lilly & Co.*, 377 U.S. 386, 395 (1964). The wisdom of the principle that the legislature and not the court is best suited to make policy judgments is borne out in the present case by the inconsistency between the Court's unfounded assumption that "a corporation without fear of sanction could have the concededly prohibited 'interlocking directorate and, if detected, simply replace the ousted director with another interlocking board

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* Section 11 articulates certain of the remedies available for violation of the Clayton Act, including an order requiring a respondent to "rid itself of the directors chosen contrary to the provisions of [Sections 7 and 8 of this Act]." The Court of Appeals apparently accepted the FTC's argument that "[s]ince only a corporation can rid itself of a director, . . . section 8 must apply to corporations as well as to individual directors" (56a). The Court rejected SCM's position that (1) an exclusively procedural section of a statute cannot form the basis for creating a new substantive liability in an entirely separate section of that statute; (2) the express language of Section 11 limits the Commission's cease and desist power to persons "subject to" the substantive liability sections of the Act; and (3) the "rid itself" language of Section 11 appears to be a vestigial remainder from the time when banking corporations were explicitly subjected to substantive liability under Section 8. The Court also rejected SCM's point that, if Section 11 could be read so as to conclude that a corporation can violate Section 8, it follows that the relief available against a corporation for such a violation is limited by the same provision of Section 11 used to infer the liability—*i.e.*—to a cease and desist order requiring the corporation to "rid itself" of the offending director.

member' " (57a) and the actual history of Section 8 enforcement in which voluntary assurances of future compliance were the norm and there is no known instance of any recidivist individual or corporation.*

If Congress had intended that Section 8 impose substantive liability on corporations, it could have explicitly so provided in the statute. Congress did not do so. It was error for the Court of Appeals to rewrite Section 8, on "policy" grounds. It is important to the integrity of Section 8 and the judicial process itself that this Court grant the writ, review and reverse the holding of the Court of Appeals.

II.

The Court of Appeals Erred in Affirming the FTC's Entry of a Permanent Injunction Against SCM Without Compliance With the Evidentiary Standard Articulated by This Court in *Grant*.

The controlling standard for entry of an injunction in Section 8 cases was established by this Court in *Grant*, 345 U.S. at 633 ("[T]he moving party must satisfy the court that relief is needed [and] [t]he necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive"). This Court should exercise its power of supervision by reviewing the Commission's departure from that standard.

In its first opinion, the Commission did not apply this standard and improperly shifted the burden of proof to

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* *See* Kramer, "Interlocking Directorships and the Clayton Act After 35 Years," 59 Yale L.J. 1266; Wilson, "Unlocking Interlocks: The On-Again Off-Again Saga of Section 8 of the Clayton Act," 45 Antitrust L.J., Issue 2, 317.

SCM (46a). The Court of Appeals reversed, holding that the *Grant* standard controlled the Commission's determination of whether SCM's single past violation warranted entry of a cease and desist order (62a).

On remand, the Commission did not reopen the three-year-old administrative record and, therefore, offered no additional evidence as to SCM's propensity to repeat its violation of Section 8. Not surprisingly, the record that it did have contained little more than the fact of SCM's single past violation—since it was closed at a time when the FTC erroneously believed that proof of a past violation alone was sufficient to justify entry of an injunction.*

Having failed to allege a "cognizable danger of recurrent violation," faced with an old record barren of such evidence, and obviously concerned that general application of the *Grant* standard to FTC injunctive proceedings would have "a severe adverse effect" (*see* p. 5, *supra*) on its enforcement authority, the Commission resolved its dilemma by characterizing its error as one of "phraseology" (73a) not substance and then only paying lip service to *Grant* while actually reapplying its own lesser standard for injunctive relief.

The Commission has persisted in applying a "possibility" standard for injunctive relief instead of the "cognizable danger of recurrent violation" standard of *Grant*. The Commission concluded that: "Having acted in this fashion in the past, and given that it continues to do business and elect directors, we believe there is cognizable danger that SCM will again neglect to prevent the election and service

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* The administrative record evidenced the fact of competition between SCM and Kraftco (limited to less than 7% of their sales) and SCM's voluntary assurance of future compliance. On this same record, the Commission had already concluded that SCM's single past violation of Section 8 was not intentional (45a).

of an interlocking director absent an order to deter it" (74a). It hardly follows from the facts that SCM continues to (1) "do business" and (2) "elect directors" that SCM will therefore become a repeat violator of Section 8. Such facts raise at most a "possibility" that SCM might violate Section 8 in the future. If all that is needed to issue an injunction against a corporation or an individual is a past violation plus an intention to remain in business, the cognizable danger of recurrent violation standard will be reduced to a meaningless verbal formula.

The Commission also reverted to its error of shifting the burden of proof to SCM—this time by the formulation of an "inference of cognizable danger of recurrent violation" (75a).

The Commission reasoned as follows. The fact of a past violation plus the facts that the corporation remains in business and continues to hire directors constitute a sufficient basis for entry of a cease and desist order. While entry of a cease and desist order is, therefore, the norm, the Commission might consider omitting such an order "[i]f there are genuinely extenuating circumstances." As to who bears the burden of proving such "extenuating circumstances," the Commission concluded:

> "[T]he corporation is peculiarly well suited to suggest what they are . . . . Absent such rebuttal, the *inference* of cognizable danger of recurrent violation must stand" (emphasis added) (75a).

The Commission's reasoning and approach constitute a circumvention of the standard for injunctive relief and the assignment of the burden of proof articulated by this Court in *Grant*. SCM respectfully suggests that the Court of Appeals erred in concluding that "the correct legal standard

was *applied*" (emphasis added) (79a) as distinct from merely *recited* by the Commission.

Putting "phraseology" aside, what the Commission has actually done is to predicate the automatic issuance of an injunction on the occurrence of a past violation, without proof of a "cognizable danger of recurrent violation." Such an approach conflicts with *Grant** and contravenes the basic philosophy underlying injunctive relief.

> "The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims." *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329-30 (1944). *Accord, Rondeau* v. *Mosinee Paper Corp.*, 422 U.S. 49, 61 (1975).

The Commission should not be permitted to enter injunctions, without the requisite evidentiary showing, purely as a matter of administrative routine.

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* *Accord, SEC* v. *Bausch & Lomb, Inc.*, 565 F.2d 8, 18 (2d Cir. 1977) ("It is well settled that the Commission cannot obtain relief without positive proof of a reasonable likelihood that past wrongdoing will recur."); *SEC* v. *Parklane Hosiery Co., Inc.*, 558 F. 2d 1083, 1089 (2d Cir. 1977) ("The Commission cannot obtain injunctive relief where there is no reasonable likelihood of recurrence."); *SEC* v. *Management Dynamics, Inc.*, 515 F.2d 801, 807 (2d Cir. 1975) ("[I]llegal activity, without more, does not automatically justify issuance of an injunction. . . .").

III.

The Court of Appeals Erred in Affirming the FTC's Imposition of a Much Broader Cease and Desist Order on SCM Than on Kraftco for the Same Violation Where the Commission Provided No Explanation for So Doing and Where the Only Reason for Treating the Two Respondents Differently Is the Commission's Apparent Interest in Punishing SCM for Exercising Its Due Process Right to a Hearing.

It is clear from a comparison of the SCM and Kraftco orders (68-71a & 27-31a) that the former is materially broader and more burdensome than the latter.* Throughout these proceedings, SCM has argued that there was no reasonable basis for the Commission's disparate treatment of SCM and Kraftco.

In response, the Commission has taken the position that it is proper to impose a broader and more burdensome order on one of two similarly situated respondents because that respondent cost the Commission "time" and "money" by exercising its Constitutional right to a hearing (49-50a & 79a). SCM respectfully suggests that the Commission has in effect put a "price tag on the exercise of due process rights" (64a) in contravention of fundamental principles of due process as articulated by this Court in *North Carolina* v. *Pearce*, 395 U.S. 711, 723-24 (1969). *Accord, Blackledge* v. *Perry*, 417 U.S. 21, 27-28 (1974), *Chaffin* v. *Stynchcombe*, 412 U.S. 17, 18 (1973).**

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* For the convenience of the Court, a columnar comparison of these orders is set forth as an addendum to this petition.

** Lower courts have extended these principles, originally adopted by this Court in the criminal context, to other areas. *Dan J. Sheehan*

(footnote continued on following page)

The Court of Appeals rejected SCM's argument because it found "the differences not sufficiently substantial to raise this constitutional question" (64a). While SCM believes that the Court of Appeals was wrong in concluding that the differences in the orders are not substantial, the basic error in the Court of Appeals' disposition of SCM's argument is its conclusion that the Commission is at all free to discriminate (regardless of whether or not the resulting differences are "substantial") between similarly situated respondents because one chose to exercise its right to a hearing. For the Court of Appeals to sanction such reasoning by the Commission contravenes the "fundamental principle of judicial review of administrative action [which] requires that in order for a reviewing court to sustain agency action the legal grounds upon which the agency acted must be correct." *National Association of Women's and Children's Apparel Salesmen, Inc.* v. *FTC*, 479 F.2d 139, 147 (5th Cir.), *cert. denied*, 414 U.S. 1004 (1973). *See FTC* v. *Sperry & Hutchinson Co.*, 405 U.S. 233, 248-49 (1972).*

Finally, SCM respectfully suggests that it was a fundamental abuse of discretion, after SCM had specifically

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(footnote continued from preceding page)

Co. v. *Occupational Safety and Health Review Commission*, 520 F.2d 1036, 1040 (5th Cir. 1975), *cert. denied*, 424 U.S. 965 (1976) (administrative context); *Atlas Roofing Co.* v. *Occupational Safety and Health Review Commission*, 518 F.2d 990, 1012-13 (5th Cir. 1975), *aff'd*, 430 U.S. 442 (1977) (administrative context); *Beall Construction Co.* v. *Occupational Safety and Health Review Commission*, 507 F.2d 1041, 1045-46 (8th Cir. 1974) (administrative context); *Clark* v. *Universal Builders, Inc.*, 501 F.2d 324, 341 (7th Cir.), *cert. denied*, 419 U.S. 1070 (1974) (civil context).

* It was particularly inappropriate for the Commission to choose an injunction as the vehicle for punishing SCM for exercising its right to a hearing since "[t]he historic injunctive process was designed to deter, not to punish." *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329 (1944). *Accord, Rondeau* v. *Mosinee Paper Corp.*, 422 U.S. 49, 61 (1975).

challenged the Commission's entry of a more severe order against it than against Kraftco for the same violation, for the FTC to make no attempt to explain its disparate treatment of the two similarly situated respondents. *Marco Sales Co.* v. *FTC*, 450 F.2d 1, 6-7 (2d Cir. 1971) ("That an administrative agency is obligated to provide petitioner with an explanation for the difference in their treatment, is well established [citing, *inter alia, Secretary of Agriculture* v. *United States*, 347 U.S. 645, 652-55 (1954)]").

Conclusion

For the foregoing reasons, a writ of certiorari should issue to the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

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ADDENDUM

Comparison of Kraftco and SCM Orders

Kraftco Order	SCM Order
1. Kraftco must not permit "any individual to serve on its Board of Directors if such individual is . . . at the same time a director *of SCM* . . . so long as Kraftco and SCM . . . compete." (28-29a)	1. SCM must not permit on its board "any individual who . . . serves at the same time as a director *of Kraftco,* . . . so long as Kraftco and SCM . . . compete, . . . or serves at the same time as a director *of any other corporation . . . which competes with SCM. . . .*" (69a)
2. "[W]ithin ninety (90) days of . . . service of this order and annually in each of the four (4) years thereafter, Kraftco shall transmit to each member of its Board . . . *a list of the following products: (a) cheese, (b) fluid milk, (c) ice cream, (d) barbecue sauce, (e) edible oils, (f) margarine, and (g) any product in which Kraftco had sales which accounted for 5% or more of Kraftco's gross revenues in the preceding fiscal year;* [*and*] *shall . . . request that each*	2. "[W]ithin thirty (30) days of the effective date of this order [and annually for five (5) years] SCM . . . shall obtain a written statement from each member of its board . . . showing . . . a listing *of each product or service produced or sold by each corporation* [*of*] *which the director . . . then serves as a director. . . .*" (69-70a)

Kraftco Order	SCM Order
director . . . certify to Kraftco in writing that he . . . does not serve on the Board . . . of any corporation which [competes] with Kraftco in the manufacture or sale in the United States of any product listed by Kraftco where the sales of such product by the corporation . . . exceed $1,000,000 per year. (29-30a)	
3. "[F]or a period [of] five (5) years . . ., Kraftco shall not permit on its Board . . . any . . . director who fails to submit a written certification pursuant to Paragraph II above." (30-31a)	3. "[For a period of five (5) years, SCM] shall not have on [its] board . . . any individual who . . . fails to submit to SCM . . . any statement required by Paragraph Two of this order." [Paras. 1 and 2 of SCM Order]. (69-70a)
4. "[For a period of *(5) years*] Kraftco shall file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order." (31a)	4. "[F]or a period of *ten (10) years* . . ., SCM . . . shall file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order. *Copies of the statements obtained pursuant to Paragraph Two of this order shall be submitted*

Kraftco Order	SCM Order
	to the Commission as part of the reports of compliance required by this Paragraph during this first five (5) years." [Para. 3 of SCM Order] (70a)
5. "Kraftco [must] notify the Commission . . . thirty (30) days prior to any change [in corporate form]." (31a)	5. "SCM . . . shall notify the Commission . . . thirty (30) days prior to any change in the corporation." [Para. 4 of SCM Order] (70-71a)

STATUTES

Clayton Act, § 8, 15 U.S.C. § 19.

* * * *

"No person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than $1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies, and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the anti-trust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a Director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter."

* * * *

Clayton Act, § 11, 15 U.S.C. § 21.

* * * *

"(b) Whenever the Commission or Board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections 13, 14, 18, and 19 of this title, it shall issue and serve upon such person and the Attorney General a complaint stating its charges

in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission or Board requiring such person to cease and desist from the violation of the law so charged in said complaint. The Attorney General shall have the right to intervene and appear in said proceeding and any person may make application, and upon good cause shown may be allowed by the Commission or Board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission or Board. If upon such hearing the Commission or Board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock, or other share capital, or assets, held or rid itself of the directors chosen contrary to the provisions of sections 18 and 19 of this title, if any there be, in the manner and within the time fixed by said order. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission or Board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued

by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission or Board may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission or Board conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however,* That the said person may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States in the manner provided in subsection (c) of this section."

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